SUPREME COURT OF THE UNITED STATES

EDWARD SPANGLER *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 87-1643. Decided June 27, 1988

The petition for a writ of certiorari is denied.

JUSTICE WHITE, dissenting.

Petitioner was charged with several counts of extortion. At trial, he testified in his own behalf and presented several witnesses who testified in support of his character and reputation. He requested that the jury be instructed that evidence of good reputation, even standing alone, may be sufficient to create a reasonable doubt about whether the defendant is guilty of the charges. Instead, the jury was instructed to consider such character evidence along with all the other evidence presented in the case to determine whether the prosecution has proved beyond a reasonable doubt that the defendant committed the particular crimes charged. The jury convicted petitioner, and the Third Circuit affirmed, holding that the trial judge did not abuse his discretion by refusing to give the requested instruction. *United States* v. *Spangler*, 838 F. 2d 85 (CA3 1988).

The decision below adds to the considerable disagreement that has arisen in the Courts of Appeal about whether and when it is proper for the judge to give the "standing alone" instruction to the jury. Some courts have held that such an instruction is never necessary and often, if not always, is improper because it actually misleads the jury. See, *e. g.*, *United States* v. *Burke*, 781 F. 2d 1234, 1238-1242 (CA7 1985); *United States* v. *Winter*, 663 F. 2d 1120, 1146-1149 (CA1 1981); *Black* v. *United States*, 309 F. 2d 331, 343-344 (CA8 1962), cert. denied, 372 U. S. 934 (1963). Other courts have disagreed with this view, stating that at least in certain

kinds of cases, if not always, a defendant is entitled to have the jury be instructed that reputation evidence in and of itself can create a reasonable doubt as to guilt. See, *e. g.*, *United States* v. *Lewis*, 482 F. 2d 632, 637 (CADC 1973); *United States* v. *Cramer*, 447 F. 2d 210, 219 (1971), cert. denied, 404 U. S. 1024 (1972). In addition, many of the pattern jury instructions that have been used by District Courts around the country have included some kind of "standing alone" instruction. See, *e. g.*, *Burke*, 781 F. 2d, at 1238; *United States* v. *Callaghan*, 588 F. 2d 1078, 1086, n. 1. (CA5 1979). This confusion can be traced directly to statements made by this Court in *Edgington* v. *United States*, 164 U. S. 361, 366 (1896), and in *Michelson* v. *United States*, 335 U. S. 469, 476 (1948). I would grant certiorari to resolve the long-standing division in the courts on this point.